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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 14-054

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

#### 1. Statutory Authority

a. In s. DCF 21.02 (10), the definition of “residential care center for children and youth” appears to be different than the definition of a “residential care center for children and youth” provided under s. 48.02 (15d), Stats., which is defined to mean “a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility”. Under what authority does the agency define “residential care center for children and youth” differently than s. 48.02 (15d), Stats.?

b. In s. DCF 21.04 (1) (f), “in effect” should be inserted after “s. 115.787, Stats.” to be consistent with s. 48.366 (1), Stats., and other references to “individualized education program” in the proposed rule.

#### 2. Form, Style and Placement in Administrative Code

a. The agency should review the introductory clause to ensure that it accurately lists the sections affected by the proposed rule, including any changes to the proposed rule in response to this report. [s. 1.02 (1), Manual.]

b. On page 4 of the rule summary, the first bullet point at the top of the page states that the phrase “young adult” is replaced with “children and youth under 21 years of age”. SECTION 21 does not use this whole phrase; it only uses the phrase “children and youth”. The agency should ensure that ch. DCF 52, as amended by the proposed rule, uses the new phrase consistently throughout the chapter, where applicable.

c. On page 6 of the rule summary, under the discussion of kinship care, the summary does not mention that changes to ch. DCF 58 include an increase in kinship care payments. This should be included in the rule summary.

d. The note created after s. DCF 21.03 (3) appears to be substantive. The agency should review this note and place any substantive material in the text of the proposed rule. [s. 1.09 (1), Manual.] The agency should also review other notes in the proposed rule and place any substantive material in the text of the proposed rule.

e. In SECTION 4, the treatment clause should read: “DCF 50.06 (3) (b) 1. is renumbered DCF 50.06 (3) (b) 1. (intro.) and amended to read:”. In addition, “(intro.)” should be inserted after “DCF 50.06 (3) (b) 1.” in the text.

f. Changes to ch. DCF 52 include replacing the term “child” with the term “resident”. While it appears that reference to the term “child” should be replaced in s. DCF 52.11 (22) (a), the proposed rule does not do so. The agency should ensure that ch. DCF 52, as amended by the proposed rule, uses the new word consistently throughout the chapter, where applicable.

g. In s. DCF 52.21 (9), “over” should be underscored because it is new material. [s. 1.06 (1), Manual.]

h. In SECTION 16, the treatment clause should read: “DCF 52.22 (1) (d) is renumbered DCF 52.22 (1) (d) 1. and amended to read:”. In addition, “DCF 52.22 (1) (d) 1.” should be replaced with “DCF 52.22 (1) (d) 1.” in the text because the treatment of subd. 1 is indicated in the treatment clause.

i. In s. DCF 52.22 (1) (d) 2., “~~or~~” should precede “; the resident’s guardian, if any,”. [s. 1.06 (1), Manual.]

j. In s. DCF 55.10 (4) (a) (intro.), “subd. 1., ~~or~~ 2., or 3.” should be replaced with “~~subd. 1. or 2.~~ any of the following”. [s. 1.03 (3), Manual.]

k. In SECTION 31, “DCF 56.04 (39)” should be replaced with “DCF 56.03 (39)” in the treatment clause.

l. In SECTION 38, the agency should make the following changes:

- (1) The treatment clause should read: “DCF 57.14 (2) (intro.) is renumbered DCF 57.14 (2) (h) and amended to read:”.
- (2) “DCF 57.14 (2) AGE REQUIREMENT. (a)” should be replaced with “DCF 57.14 (2) (h)” in the text. The treatment of par. (h) is indicated in the treatment clause, so it does not need to be underscored. In addition, it is not necessary to duplicate the title of the subsection in the text.
- (3) As noted in comment (1) above, par. (h) should be used instead of par. (a) to avoid reusing a number from the existing rule. [s. 1.03 (5) (a), Manual.] Similarly, par. (b) should be replaced with a different paragraph number, such as par. (j).
- (4) In s. DCF 57.14 (2) (a), the stricken text “~~Except as provided in sub. (4) (a),~~” should appear before the underscored text “and 2 years older...”. [s. 1.06 (1), Manual.]

- (5) The renumbering of the paragraphs to subdivisions should appear in a separate SECTION with the following treatment clause: “DCF 57.14 (2) (a) to (g) is renumbered DCF 57.14 (2) (j) 1. to 7.”. [See comment (3) above regarding the use of par. (j).]

- m. In SECTION 39, the creation of par. (c) should be replaced with a different paragraph number, such as par. (L), to avoid reusing a number from the existing rule. [s. 1.03 (5) (a), Manual.]

- n. In s. DCF 57.23 (2) (a) (intro.), “œ” should precede “if the resident is under 18 years of age”. [s. 1.06 (1), Manual.]

- o. In SECTION 57, “and 5.” should be inserted after “DCF 58.10 (3) (a) 3.” in the treatment clause.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. In the statutory authority section, “Sections 48.366 (4) (b) and 938.366 (4) (b), Stats.” should be replaced with “Sections 48.366 (4) and 938.366 (4), Stats.”. The agency appears to be relying on all of the contents of sub. (4), not only par. (b).

- b. In the related statute or rule section, “938.355 (4) (b) 4., 939.357 (6) (a) 4.” should be replaced with the correct references. Those statutory sections do not exist.

- c. In s. DCF 21.01, “939.366, Stats.” should be replaced with “938.366, Stats.”

- d. In s. DCF 21.03 (3), the purpose for cross-referencing “s. DCF 21.04 (3)” is unclear.

- e. In s. DCF 21.06 (1), “938.201 (1) (f), Stats.” should be replaced with “938.207 (1) (f), Stats.”.

- f. In s. DCF 21.07 (3), “s. DCF 21.08 (1), (3), or (4) (c)” should be replaced with “s. DCF 21.08 (1), (3), or (4)” in both instances.

- g. In s. DCF 21.08 (4) (a), “ch.” should be inserted before “HA 3”. [s. 1.07 (2), Manual.]

- h. In s. DCF 21.08, the purpose for cross-referencing ss. DCF 21.04 (3) and 21.07 is unclear. Is the purpose to define to which agency the youth must submit the written request for an appeal? Is the purpose to cross-reference the authority that the agency had to deny or terminate the agreement? The agency should review and clarify the intent behind cross-referencing these sections.

- i. In s. DCF 52.03 (22) (e), “, Stats” should be inserted after “s. 48.427 (3m) (a) 1. to 4. or (am)”. [s. 1.07 (2), Manual.]

- j. In s. DCF 56.09 (1m) (cm), “subsection” should be replaced with “paragraph”. [s. 1.07 (2), Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. In s. DCF 21.02 (3), the definition of “aging out” is confusing. Does “aging out” mean that a youth is discharged from out-of home care due to one of the orders or agreements listed in the definition? In addition, it is unclear whether pars. (a) to (d) apply to the entire list of orders

and agreements or just to a voluntary placement agreement. The phrase “that terminates the date of any of the following” is incomplete and should be rewritten to read “that terminates on the date of any of the following”. The agency should clarify these issues in the definition of “aging out”.

b. In s. DCF 21.02 (8), the definition of “independent living-transition-to-discharge plan” includes a list of basic resources. The basic resources listed in pars. (b) to (d) begin with either an adverb or a conjunctive, not a noun, but the other resources listed start with a noun, such as par. (i), which is written to read: “Information on how the youth can obtain essential documents.”. Paragraphs (b) to (d) should be rewritten to be similar to par. (i).

c. In s. DCF 21.02 (9), “out-of-home care” means “placed in a foster home...”. While the term “out-of-home care” appears to be a noun, the definition begins with a verb. This definition should be clarified and rewritten. In addition, “Home” should not be capitalized. [s. 1.01 (4), Manual.]

d. In s. DCF 21.02 (10), the definition of “residential care center for children and youth” needs a quotation mark at the end of the term.

e. In s. DCF 21.02 (11), the definition of “voluntary placement agreement” should be reviewed and revised based upon the following comments:

- (1) Does the term “county agency” refer to a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats.? If so, the definition should use these terms instead of “county agency”.
- (2) It is unclear what the cross-reference in the phrase “licensed child welfare agency under s. 48.60, Stats.” is intended to modify. It appears that this phrase should read “child welfare agency licensed under s. 48.60, Stats.”.
- (3) The phrase “and a child or youth’s parent or guardian” should be rewritten to read “and the child or youth’s parent or guardian”.
- (4) The phrase “for the placement of the child or youth in a” is repeated. It appears that the second phrase should be deleted.

f. In s. DCF 21.04 (1), “all of” should be inserted before “the following information”. [s. 1.03 (3), Manual.]

g. Section DCF 21.04 (3) (a) refers to “the agency in the county where the youth resides”. This appears to refer only to a county department of social services under s. 46.22, Stats., or a county department of human services under s. 46.23, Stats. As defined by the proposed rule, the term “agency” also refers to the Department of Children and Families or the Department of Corrections. The agency should review the intent of par. (a) and make sure that the usage of the term “agency” is consistent with the definition.

h. Section DCF 21.04 (7) (a) references the youth’s enrollment in “school”. However, elsewhere in the rule, the phrase “a secondary school or its technical or vocational equivalent” is used. The agency should review the intent of sub. (7) (a) and revise the term “school” to be consistent with the rest of the proposed rule.

i. In s. DCF 21.04 (8) (a), should the reference to “5 working days” reference sub. (6) in both instances?

j. Section DCF 21.04 (8) (b) references the agency making “good faith efforts”. It is unclear the number of good faith efforts that satisfy this requirement. The agency should clarify the intent of sub. (8) (b).

k. In s. DCF 21.05 (7), the agency should clarify what the “effective date” refers to.

l. Section DCF 21.07 (2) references a youth’s noncompliance with a provision of the agreement that the youth could change. It is unclear how a youth could change a provision of an agreement that he or she entered into with an agency. The agency should review and clarify the intent of sub. (2).

m. In DCF 21.07 (3), the phrase “will be effective 10 days after the date of the notice” should be rewritten to either read “will become effective...” or “will go into effect...”. Also, the phrase “eligibility shall continue” should be rewritten to read “the youth shall remain eligible”.

n. In s. DCF 21.08 (3), to what does “recommendation” refer?

o. In s. DCF 21.08 (4) (b), the phrase “a request for hearing” should be rewritten to read “a request for a hearing” throughout the paragraph.

p. In s. DCF 21.09, it is unclear whether the phrase “and the youth reappears” applies to just termination of the youth’s eligibility or if it also applies to a denial of the youth’s application to re-enter out-of-home care. The agency should review and clarify the intent of this phrase.

q. In s. DCF 52.03 (22), “apply” should be inserted after “any of the following”. This comment also applies to s. DCF 54.01 (4) (b) (intro.).

r. Section 54.01 (4) (b) creates a definition of a “child”. It is unclear from the (intro.) how three of the items listed (being under 21 years of age, under juvenile court jurisdiction, and being provided services by a child welfare agency) must apply to a person. Must the person be under the age of 21 and be under court jurisdiction or being provided services? Must only one of the items apply? The definition of “child” throughout the proposed rule should be reviewed and revised based on this comment.

s. In s. DCF 56.03 (34p), “~~required to be~~” should be omitted. It is not in the existing text of the rule.

t. It is unclear why the term “youth” is needed if the proposed rule revises the definition of a “child” to include a person who is between 18 and 21 years of age. For example, s. 56.09 (1m) (cm) appears to use the term “youth” when the term “child” could be used instead. Also, the term “youth” is not defined. The agency should review the usage of the terms “child” and “youth”.

u. In s. DCF 57.25 (6) (b) and (c), the word “residents” is inserted. However, the phrase “residents and children” appears to be repetitive because the term “resident” is defined to include children. The agency should review the intent of this phrase and revise it for clarity.

v. In SECTION 50, should the last sentence be included in a note? If so, the agency might consider including “Note:” before that sentence.